

**ILLINOIS STATE POLICE MERIT BOARD
OF THE STATE OF ILLINOIS**

IN RE THE MATTER OF:

**TROOPER VALENTINO DIAZ
I.D. # 6393**

**Illinois State Police
Merit Board No. 18-03**

DECISION

THIS CAUSE comes before the Merit Board on a four-count *Complaint* filed by Leo P. Schmitz, Director of the Illinois State Police, following a full hearing before duly appointed Merit Board Hearing Officer Edward W. Williams.

FINDINGS OF FACT

The Merit Board, having reviewed the charges filed, the evidence and testimony submitted, the arguments of the parties, and the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law*, does hereby adopt and incorporate herein the Hearing Officer's *Recommended Findings of Fact and Conclusions of Law* for Counts I, II, III, and IV of the *Complaint*.

The Merit Board finds Trooper Diaz guilty of violating the Department's Rules of Conduct (ROC) as alleged in Count I of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Diaz violated ROC-002, Paragraph III.A.47.b in that he drove his personal vehicle off-duty while impaired and under the influence of alcohol. Trooper Diaz drove to and consumed alcohol at two different bars, to the point where his memory was "blacked out." Trooper Diaz had a blood alcohol level of .266. Trooper Diaz pled

guilty to the offense of driving under the influence and admitted that he drove his vehicle while under the influence of alcohol on April 8, 2016.

The Merit Board finds Trooper Diaz guilty of violating the ROC as alleged in Count II of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Diaz violated ROC-002, Paragraph III.A.1. and 2. in that he committed the offense of Driving Under the Influence of Alcohol in violation of 625 ILCS 5/11-501(a)(2) when he drove his personal vehicle off-duty while under the influence of alcohol. On June 19, 2017, Trooper Diaz pled guilty to said offense in Cook County Circuit Court under case number 16TRTK110482.

The Merit Board finds Trooper Diaz guilty of violating the ROC as alleged in Count III of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Diaz violated ROC-002, Paragraph III.A.47.g in that he, during the evening hours of April 7, 2016, through the early morning hours of April 8, 2016, consumed alcohol at several different bars until he was impaired and intoxicated, crashed his personal vehicle through the front door of a Walgreens retail store, and was arrested for driving under the influence of alcohol by the Chicago Police Department. Trooper Diaz consumed alcohol to the point his memory was "blacked out." Trooper Diaz had a blood alcohol level of .266. Trooper Diaz was scheduled to work on April 9, 2016, but did not show up for work that day. He contacted the Department and requested to use a "sick" day instead.

The Merit Board finds Trooper Diaz guilty of violating the ROC as alleged in Count IV of the *Complaint*. Specifically, the Merit Board finds by a preponderance of the evidence that Trooper Diaz violated ROC-002, Paragraph III.A.8 in that he engaged in conduct which caused the Department to be brought into disrepute when he crashed his personal vehicle into the front

door of a Walgreens retail store while impaired. Several Chicago Police Officers arrived at the crash scene and one of them, Chicago Police Officer Lopez, asked Trooper Diaz whether or not he had been drinking. Trooper Diaz replied, "it's obvious, I'm f**ked up." Chicago Police Officer Lopez subsequently placed Trooper Diaz under arrest for driving under the influence of alcohol. Trooper Diaz pled guilty to said offense in Cook County Circuit Court on June 19, 2017. Trooper Diaz's actions brought the Department into disrepute.

CONSIDERATION OF MITIGATING AND AGGRAVATING FACTORS

In making its determination of the appropriate level of discipline, the Merit Board considered all mitigating and aggravating factors presented by Trooper Diaz and the Department, including, but not limited to, the following:

Trooper Diaz has taken full responsibility for his actions, and appeared genuinely appreciative of the wrongfulness of his conduct.

Lieutenant Angelo Mollo testified favorably about Trooper Diaz's performance in the last two years in his administrative role. Master Sergeant Dominick Falcone testified with praise for Trooper Diaz's attitude, work habits, and team spirit.

Trooper Diaz offered several prior Merit Board decisions as precedent cases. The cases provided involve other officers disciplined for misconduct involving alcohol and DUI related infractions and bringing the Department into disrepute. The cases presented resulted in suspensions ranging from 60 to 180 days. However, no case provided is an identical, completely related case to the present case, and the Board is not bound to issue the same discipline in this case.

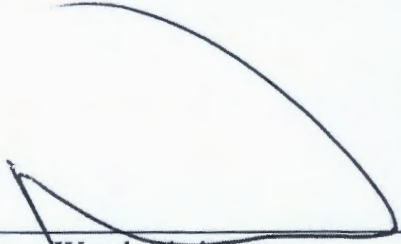
The Department requested a penalty of termination when filing charges in this matter.

Trooper Diaz consumed alcohol to the point of significant impairment, where his memory was "blacked out." Trooper Diaz had a blood alcohol level .266. Trooper Diaz's judgment to drive his vehicle while in this state of impairment shows a significant failure of judgment.

PENALTY

The entirety of the evidence presented shows Trooper Diaz's continued employment as an officer with the Illinois State Police would be detrimental to the discipline and efficiency of the Department, and constitutes cause for termination. It is, therefore, the unanimous decision of the Merit Board to terminate Trooper Valentino Diaz from employment with the Illinois State Police.

Dated this 17th day of April, 2019.



Reeve Waud, Chairman
State Police Merit Board, State of Illinois


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**ILLINOIS STATE POLICE
MERIT BOARD**

**STATE OF ILLINOIS
ILLINOIS STATE POLICE MERIT BOARD**

IN THE MATTER OF:

TROOPER VALENTINO DIAZ
I.D. No. 6393


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Illinois State Police
Merit Board No. 18-3

**RECOMMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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I. BACKGROUND

A. Pleadings

On April 10, 2018 Leo P. Schmitz, Director of the Illinois State Police (ISP) filed a Complaint with the Illinois State Police Merit Board. The Complaint contains four counts of alleged violations against Illinois State Police Trooper Valentino Diaz (Respondent). Director Schmitz requested the Illinois State Police Merit Board conduct a hearing and terminate Respondent from his employment with the Illinois State Police.

Certain allegations of the Complaint arise from Respondent's conduct on April 7, 2016 when he drove his personal vehicle under the influence of alcohol. Additional allegations contained in the Complaint arise from Respondent's guilty plea on June 19, 2017 to driving under the influence of alcohol, consuming alcohol in excess and discrediting himself and bringing the department into disrepute.

Count I Driving a Vehicle While Under the Influence of Alcohol: The Complaint alleges that on April 7, 2016, Respondent violated Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.47.b, which states that officers will not drive or be in physical control of a vehicle while under the influence of alcohol, drugs, or intoxicating compounds regardless of while on or off-duty. Specifically, the Complaint states that Respondent plead guilty on June 19, 2017 to the offense of Driving Under the Influence (DUI) in violation of 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court.

Count II Violation of State Law, Guilty Plea to Driving Under the Influence of Alcohol: The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.1. and 2. Department Directive ROC-002 Paragraph III.A.1. requires that officers will uphold

the Constitutions of the United States and the State of Illinois and obey all federal, state and local laws. Paragraph III.A.2. states that a guilty plea will be prima facie evidence of a violation of this directive. Specifically, the Complaint states that the Respondent on June 19, 2017 pled guilty to a violation of state law when he pled guilty to driving under the influence of alcohol in violation of 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court.

Count III Consuming Alcoholic Beverages to the Extent it Results in Impairment that

Discredits Him or the Department: The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.47.(g), which requires that officers not consume alcohol while off-duty to the extent that it results in behavior that discredits them or the Department, or render the officer unfit to report for their next regular tour of duty. Specifically, the Complaint alleges Respondent consumed alcohol at several different bars, crashed his personal vehicle while intoxicated and was subsequently arrested, and that Respondent did not appear for work the following day during his scheduled tour of duty.

Count IV Bringing the Department into Disrepute: The Complaint alleges that Respondent violated Department Directive ROC-002, Paragraph III.A.8, which requires that officers maintain a level of conduct in their personal and business affairs that is keeping with the highest standards of law enforcement and not bring the Department into disrepute. Specifically, the Complaint alleges that Respondent brought the Department into disrepute when he crashed his personal vehicle into the front door of a Walgreens retail store while impaired. The Complaint further alleges the crash was investigated the Chicago Police Department and the Respondent, when asked by Chicago officers as to whether he had been drinking, replied, "It's obvious, I'm fucked up."

B. Hearing Procedural Issues

The Complaint was filed April 10, 2018. Respondent was represented by Bruce Bialorucki. The Director of the Illinois State Police was represented by Assistant Attorney General Emma Steimel and by Assistant Attorney General David Tichy.

On May 30, 2018, Respondent filed a Motion for *In Camera* Inspection, requesting the Hearing Officer to review documents being withheld by ISP to determine if privilege applied. The Hearing Officer made rulings on the admissibility of various documents therein.

On July 25, 2018, Respondent's initial attorney of record, Guy Studach, filed a Motion for Leave to Withdraw and Substitution of Attorney to substitute Bruce Bialorucki as attorney of record for Respondent. On October 12, 2018, Petitioner filed a Motion for Extension of Time to confirm the availability of certain witnesses and requested an extension of one day. The Hearing Officer granted the motion and extended Petitioner's deadline to submit their witness scheduling statement until Wednesday, October 17, 2018.

Petitioner filed a Motion in Limine on October 17, 2018 seeking to bar Respondent from admitting into evidence certain past Merit Board Decisions. The Hearing Officer denied the motion in part and granted in part; allowing nine past Merit Board decisions to be entered and denying that four procedure cases be entered.

The formal evidentiary hearing was held on October 22, 2018. Testimonial and documentary evidence was presented during the hearing. During the hearing, the Director of the Illinois State Police was represented by Assistant Attorneys General Emma Steimel and David Tichy. Attorney Bruce Bialorucki continued to represent Respondent. Following the close of the evidence at the hearing on October 22, 2018, a briefing schedule was established for

simultaneous written closing arguments to be filed by December 5, 2018.

II. HEARING TESTIMONY

A. Witness List

The following witnesses testified at the hearing in this case. The page number of the transcript of the proceedings upon which the testimony of the witness appears is included in parentheses.

October 22, 2018

1. Trooper Valentino Diaz (15-32 & 169-198)
2. Officer Ivan Lopez (33-43)
3. Trooper Daniel Avila (45-56)
4. Colonel Jamal Simington (57-86)
5. Captain Margaret McGreal (95-116)
6. Lieutenant Angelo Mollo (117-136)
7. Jennifer Pfaff, LCSW (137-152)
8. Master Sergeant Dominick P. Falcone (153-168)

B. Exhibit List

The following exhibits were admitted into evidence in this case:

Petitioner's Exhibits

Exhibit 1	Stipulation of Documents
Exhibit 2	Certified Statement of Disposition
Exhibit 3	902(11) Certification and Walgreens Documents
Exhibit 4	Letter from John P Wetstein
Exhibit 5	Walgreens Security Footage (DVD)
Exhibit 6	ISP Merit Board Decision re Trooper Cody Garza

Respondent's Exhibits

Exhibit A	Case Law and Findings from various ISP Merit Board hearings
Exhibit B	Part II (Trooper Diaz Job Performance Reviews)
Exhibit C	Letter from Leo P. Schmitz to Trooper Diaz
Exhibit D	Email regarding Trooper Diaz (and others) Work Schedule
Exhibit E	Email regarding modification of Trooper Diaz's shift start time

C. Background Summary

Respondent is employed as a State Police Officer by ISP and holds the rank of Trooper. On the evening of April 7, 2016, at approximately 9:00 p.m., Respondent visited Chuck's Southern Comforts Café ("Chuck's"). Chuck's is a bar located at 6501 West 79th Street, Burbank, Illinois. Respondent went alone to Chuck's, although Respondent's friend, Adrian Sanchez, is employed as a bartender at Chuck's. While at Chuck's, Respondent drank multiple glasses of whiskey and Coca-Cola to the point that Respondent became intoxicated. After several hours of drinking at Chuck's, Respondent drove his personal vehicle – a 2009 Infiniti Model G37 Sedan – to the Fire Station Café. Fire Station Café is a bar located at 6336 S. Harlem, Summit, Illinois. The distance between Chuck's and the Fire Station Café is approximately 3.3 miles. Respondent admitted to having driven this distance while intoxicated.

Upon arrival at the Fire Station Café, Respondent continued to drink additional alcoholic beverages of an unknown type. After an undetermined amount of time, Respondent left the Fire Station Café and attempted to drive himself to his residence located at 5135 South LeClaire Avenue, Chicago.

At approximately 3:42 a.m. on April 8, 2016, while attempting to return to his residence, Respondent drove his vehicle through the front door of the Walgreens store located at 7150 West Archer Avenue, Chicago, Illinois. The cost to repair the damage to the Walgreens store because of the crash exceeded \$77,000.00

Minutes later, Chicago Police Department Officer Ivan Lopez, star no. 13516, observed Respondent standing outside the Walgreens. When Officer Lopez asked Respondent if he had been drinking, Respondent replied in the affirmative.

At approximately 3:50 a.m. on April 8, 2016, Chicago Fire Department ambulance #12 arrived on scene. Respondent initially refused on-site treatment or a hospital transport. However, Respondent was eventually transported via ambulance to Loyola University Medical Center at approximately 4:15 a.m. Respondent's blood was drawn for emergency medical treatment at approximately 4:45 a.m., just over one hour following the crash. At 4:45 a.m. Respondent's blood alcohol concentration level was .314, computed using whole serum or plasma method. His BAC computed using the whole blood method was .226. The legal limit for driving under the influence of alcohol is .08, which is computed using the whole blood method. Dividing the serum or plasma method value by 1.18 results in the whole blood value.

While still at Loyola University Medical Center in Maywood, Illinois, Respondent was placed under arrest for driving under the influence of alcohol at approximately 6:14 a.m. by Chicago Police Officer Lopez. On June 19, 2017, Respondent pled guilty to the offense of DUI in violation of 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court Case No.: 16TRTK110482. Respondent received one year of court supervision, alcohol counseling or treatment, mandatory attendance at a victim impact panel, and ordered to pay a fine of \$1,329. This court supervision was terminated satisfactorily on March 13, 2018.

Effective April 8, 2016, Respondent was stripped of his police powers and placed on restrictive duty in an administrative capacity. Respondent's restrictive duty at ISP District Chicago in Des Plaines continues to date.

On January 18, 2017 agents from the Illinois State Police Division of Internal Investigations conducted an administrative review of Respondent. This review took place in the presence of Respondent's attorney and union representative. Respondent was given due notice

of the allegations against him and his administrative rights. During the review, Respondent stated, among other things, that he drank multiple whiskey and Cokes at Chuck's over the course of a few hours, departed Chuck's while intoxicated, drove his personal vehicle to a second bar called Fire Station, drank more alcoholic beverages, returned to his vehicle, and subsequently crashed. Respondent stated that he "blacked out" and was incapable of remembering other details of the crash or his drinking prior to the crash. He further stated that he was arrested by the Chicago Police Department and charged with two misdemeanor counts of driving under the influence of alcohol, failure to reduce speed to avoid an accident, and pled guilty in court to the offense of driving under the influence of alcohol. Respondent reported the successful completion of community service through the Cook County Sheriff's Police work alternative program ("S.W.A.P.") and that he paid his court-ordered \$1,329 fine.

D. Summary of Relevant Testimony WITNESSES

The following is a brief review of the evidence admitted in this case. This review does not include a recitation of all the evidence presented in the case and is not intended to be an all-inclusive summary of the evidence. Instead, it is intended to serve as a guide for the basis and understanding of the Hearing Officer's recommended findings and conclusions of law. The Hearing Officer has specifically considered all the testimony and exhibits introduced in this case and the arguments, both written and oral, of the parties' attorneys. The fact that many of the specifics of the testimony, documents and arguments are not included in this summary should not be interpreted to mean that the Hearing Officer did not fully consider them.

VALENTINO DIAZ
(Called in Department's Case (Pgs. 15-32))
(Called in Respondent's Case (Pgs. 169-198))

Valentino Diaz has been employed with the Illinois State Police since February 3, 2013. (169). Diaz worked as an Illinois State Trooper assigned to patrol duties in Des Plaines, Illinois. (15). Diaz was assigned to work midnight shifts, starting at 10:00 p.m. and ending at 6:00 a.m., or at 9:00 p.m. and 5:00 a.m. for the early car. (173-174). The last shift Diaz worked prior to the crash was a normal, midnight shift from 10:00 p.m. to 6:00 a.m. (174). After his shift, Diaz returned home and slept until approximately 1:00 or 2:00 p.m. (175). Diaz would either go to the gym after working his shifts or go straight home and try to sleep within approximately 30 minutes. (175). Officers working the midnight shift do not sleep during the night and Diaz did not have a normal sleep pattern. (175).

On April 7, 2016, at approximately 9:00 p.m., Diaz drank approximately four or five alcoholic beverages at a bar called Chuck's Southern Comfort Café. (16, 176). Chuck's is in Burbank, Illinois off 79th and Central. (177). Diaz's friend (Adrian Sanchez) was working that evening as the bartender for Chuck's and poured drinks that Diaz believes were made stronger than typical, likely with two shots of whiskey instead of one. (16, 29-32, 175-177). Diaz had been to the bar with friends before when his friend was bartending. (192). Diaz believes the drinks on April 7 were stronger than they had been before. (192-193). Diaz paid for the drinks he ordered. (193).

Around 11:00 p.m., Diaz, while intoxicated, drove his personal vehicle – a 2009 Infiniti G37 Sedan – to another bar called Fire Station Café. (16-17, 176-177, 193). The Fire Station Café is near 65th and Harlem. (178). Diaz has been to the Fire Station Café twice in the past few

years. (194). Diaz recalls entering the Fire Station Café, but his memory was “blacked out” immediately thereafter and continued drinking, though he does not remember how much he drank. (16-17, 30, 176-177). After entering the Fire Station Café, the next thing Diaz remembers is sitting in an ambulance with a Chicago Police Officer. (17, 176).

After leaving the Fire Station Café, at 3:47 a.m., Diaz crashed his personal vehicle into the front of the Walgreen’s Drug Store located at the intersection of Harlem and Archer. (19-21). The Fire Station Café is approximately five minutes away from this Walgreens. (21). Diaz lives at 5135 South LeClaire Avenue, which is approximately ten minutes away from the Fire Station Café. (21). The intersection of Harlem and Archer is on Diaz’s usual route home. (177-178). Diaz is unable to recall the events of the crash because he was intoxicated and blacked out at the time. (21). Security footage of the crash shows Diaz crashing his vehicle and shows an individual behind the front doors of the Walgreen’s. (22). Diaz was unaware of the individual’s presence at the time of the crash. (22). The crash caused a combined property damage and merchandise loss of approximately \$80,000.00 to Walgreen’s. (23).

Diaz vaguely recalls exiting his vehicle and walking around the exterior of his vehicle. (30). After the crash, Diaz refused a sobriety test on the scene. (24-25). Diaz was then transported via ambulance to Loyola Hospital and at 4:45 a.m. was administered a blood draw. (25, 178). The result of the blood draw indicated a blood alcohol content above .08. (25-27) Diaz had no other major injuries. (179).

Diaz was accompanied at Loyola Hospital by Master Sergeant Ryan Epps. (179). Diaz was arrested at Loyola Hospital after being released the following day due to the results of the blood draw for driving under the influence. (28, 179-180). Diaz was issued an I-Bond and

released after his arrest. (179-180). After being released, Master Sergeant Epps drove Diaz home. (180). Diaz pled guilty to the serious offense of driving under the influence on June 19, 2017. (28, 180, 187). Diaz served a summary suspension on his license. (180). Diaz was issued a SCRAM bracelet – an alcohol monitoring bracelet – for six months. (181). Diaz did not consume alcohol for the six-month period while wearing the bracelet but has since resumed drinking. (190-191).

Diaz was issued court supervision for one year, completion of alcohol classes, fines, and community service. (181-182, 194). Diaz's car insurance covered approximately \$50,000.00 - \$60,000.00 in damage to Walgreen's. (182). The personal cost to Diaz was approximately \$50,000.00. (189). This cost includes Diaz's payment of the remaining balance to Walgreen's, as well as legal fees and fines. (195).

Diaz completed one year of counseling with Jennifer Pfaff. (182-183). Diaz worked with Pfaff to identify stress relieving skills. (183). Diaz attended Alcoholics Anonymous (AA) and it helped him put his situation in perspective and see the seriousness of his situation. (183-184). Diaz attended between six and eight AA sessions over a period of approximately three months. (194). Prior to the crash Diaz considered himself a social drinker who drank responsibly. (173, 196). Diaz does not consider himself an alcoholic. (173).

Diaz has training and experience in identifying drivers under the influence. (28, 191). One of Diaz's main patrol responsibilities was to identify drivers under the influence. (29). Diaz has arrested drivers for driving under the influence. (191). Diaz brought the Illinois State Police Department into disrepute due to his actions. (29, 187-188).

Diaz has had no major disciplinary issues during his employment with the Illinois State Police. (170). Following the crash, Diaz was placed on restricted duty and the captain of the district reclaimed Diaz's equipment, uniform, and squad car. (170-171). Diaz currently has no identification that identifies him as an Illinois State Trooper, including any clothing with the police seal or insignia. (171-172). While on restricted duty Diaz was assigned an unmarked car for use when commuting to and from the office. (171). Diaz has no police powers otherwise granted to Troopers and essentially works as a civilian at headquarters during his shifts on restricted duty. (172). Diaz is normally scheduled to work Monday through Friday, 9:00 a.m. to 5:00 p.m. (172, 195). Diaz has felt embarrassed at work while being on restricted duty and has consistently accepted responsibility for the crash. (186-189).

Diaz began restricted duty by assisting the fleet officer in de-striping and processing squad cars that had been involved in crashes. (184). Following this, Diaz worked in the DVD room processing DVDs and issuing copies to attorneys. (184). Diaz processed packets, assisted Lieutenant Mollo around headquarters, and would assist in retrieving cars from Springfield. (184). For a period, Diaz volunteered to work on weekends to take the place of a desk Trooper so the Trooper could go out on patrol. (184-185). As a desk Trooper Diaz did not have police powers and operated effectively as a 911 operator. (185).

IVAN LOPEZ
(Called in Department's Case (Pgs. 33-43))

Ivan Lopez has been a Chicago Police Department officer for about 14 years. (33-34). On April 8th, 2016, Lopez was assigned a patrol shift from 9:00 p.m. until 6:00 a.m. in the Robert Robert Beat. (35). Lopez received a call regarding a vehicle that had crashed through a Walgreen's and responded with his partner, Robert Hvorcik, within minutes. (35). A state

Trooper was on scene prior to Lopez's arrival. (36). Lopez saw damage to the Walgreen's doors, a vehicle inside near the cosmetics counter, and Diaz standing where the Walgreen's doors would have been. (36, 41-42). Lopez confirmed that there were no other parties in the vehicle or injured, then asked Diaz if he was the driver of the crashed vehicle. (37). Diaz responded affirmatively and provided an Illinois Driver's License. (37, 42). When asked if he had been drinking, Diaz responded: "It's obvious, I'm fucked up." (37). Diaz was uncooperative when Lopez took him to the ambulance and would not respond when asked if he (Diaz) was a state police officer. (38, 41). Lopez did not search the vehicle for Diaz's weapon because the vehicle was near electrical components that created an unsafe situation for Lopez. (38-39). Lopez determined that Diaz was likely intoxicated because Diaz could not maintain his balance, had red, bloodshot eyes, and Diaz's general uncooperative demeanor. (39). Due to the dust from the accident and the deployment of Diaz's airbags, Lopez was unable to detect the smell of alcohol on Diaz. (42)

Lopez accompanied Diaz in the ambulance as Diaz was transferred to Loyola Hospital and was present at the time of Diaz's blood draw. (40). After the results of the blood draw indicated a blood alcohol content of .314, Lopez read Diaz his Miranda rights and placed Diaz under arrest. (40-41). Lopez asked Diaz to submit to a field sobriety test at the time and Diaz refused. (40). Lopez then requested that another officer relieve Lopez so that he could return to the station and process Diaz's arrest. (41).

DANIEL AVILA
(Called in Department's Case (Pgs. 45-56))

Daniel Avila has been employed as Trooper with the Illinois State Police since February 3, 2014. (45). Avila was assigned to work a shift without a partner beginning on April 7, 2016 at

9:00 p.m. and ending on April 8, 2016 at 5:00 a.m. (46). Avila heard over the police radio that there had been a crash at the Walgreen's on Archer and Harlem. (46-47). When Avila arrived on scene, Trooper Kryzsiak was on scene with the ambulance and fire department and Avila noted the damage to the Walgreens. (47). Avila saw tire tracks from the Harlem-Archer intersection, damage to an approximately 5-foot tall iron gate that surrounded the parking lot, and the trail of damage in the Walgreens caused by the crashed vehicle. (48, 52-53, 54-55). Avila did not see Diaz on the scene at the time Avila arrived, but later saw Diaz in the ambulance. (49). While in the ambulance, Diaz told Avila: "You've got to do what you've got to do," repeatedly and stated that [Diaz] did it. (49-50, 53-54).

As a part of Avila's job duties, he has received training to identify the signs of intoxication, has pulled individuals over for driving under the influence, and has arrested individuals for driving under the influence. (50-51). Avila determined that Diaz was under the influence of alcohol because of Diaz's red, glassy eyes, slurred speech, and the odor of alcohol. (51). Avila was not aware that Diaz was a Trooper until Trooper Kryzsiak so informed him. (51-52). Avila did not receive indication that Diaz recognized him as a Trooper; Avila and Diaz worked on different patrol routes, though Avila had seen Diaz before. (50, 53). Troopers Avila and Kryzsiak searched Diaz's vehicle and did not find either Diaz's primary or secondary weapon. (54). At no point did Diaz attempt to try and convince Avila to release him or be more lenient. (54).

JAMAL SIMINGTON
(Called in Department's Case (Pgs. 56-86))

Jamal Simington is employed at the Illinois State Police as the Colonel of the Division of Internal Investigations and has held this position since February of 2018. (57). Simington has

worked for the department for 19 years. (57). Prior to working in the Division of Internal Investigations Simington served as an entry level officer on patrol, then after approximately three years transferred to the investigations and began working criminal, homicide, property crimes, and other cases. (58). Simington spent time in drug enforcement and spent 12 years in total prior to returning to patrol. (58). Simington served as a lieutenant, as well as captain district commander, regional commander, and lieutenant colonel in the division of operations. (58). Due to Simington's experience he is familiar with the disciplinary procedure for sworn officers. (58). An investigation in the Division of Internal Investigations begins when a complaint is issued against a department member; a District Commander for the District of Chicago issued a complaint in this case. (58-59). Investigations that result in recommended discipline of 31 days or more are sent to the Merit Board; anything Level 3 or higher is presented to the Disciplinary Review Board. (59). The Disciplinary Review Board ("Board") consists of four colonels – the Division of Administration, Division of Forensic Services, Division of Operations, and Division of Internal Investigations (Simington). (59). Evidence is presented to the Board, including the ability for the accused to testify. (59). Diaz testified at a hearing before the Board. (59). The Board can then recommend discipline at one of three levels: under 30 days, over 31 days, or up to termination. (59-61). The Board does not have the authority to terminate an officer; the Merit Board has exclusive authority to terminate an officer. (69).

Simington was present for Diaz's hearing; the other colonels and Simington voted for "up to termination" for Diaz. (60-61). The determination of whether to terminate is made later. (61, 69). Up to termination is a Level 7 range based on the disciplinary matrix. (62, 73). Simington and the other colonels viewed evidence and heard testimony that supported a

recommendation of up to termination. (61-67, 70). Between 25 and 30% of the Department's fatalities are the result of drivers who are under the influence of alcohol. (66-67). The Department has worked with the Department of Transportation to take an aggressive stance against driving under the influence. (67).

Simington reviewed Diaz's Division of Internal Investigation file, the minutes from administrative interview, and witness statements in preparation of testimony. (70). Simington did not review Diaz's performance evaluations because his performance evaluations were not the driving force behind the investigation. (70-71). There is no documentary evidence submitted to the Board, however the employee reviews could be presented orally; Simington does not recall these employee reviews being presented. (82-83). Simington did not review the precedent cases provided by the Lodge because Diaz's case was looked at strictly based upon the rule violations caused by Diaz's conduct and no other case influenced the Board's decision. (73, 76). Simington was not given a copy of the precedent cases provided in discovery to the Department. (76, 79). The precedent cases had no standing in the current case. (80).

Diaz's violation was determined to be Level 7 on the Disciplinary Matrix. (73). The Disciplinary Matrix has been in place for at least six or seven years. (73). The Disciplinary Matrix was developed in concert with the Unions to establish a fair discipline process that is transparent and consistent. (74). The Merit Board has never approved the Disciplinary Matrix. (75).

Simington reviewed the precedent cases during cross-examination. (77). In the first case Simington reviewed – regarding Sergeant Steven Poe – resulted in a 120-day suspension for being involved in an accident, arrested, and found guilty of driving under the influence in his

squad car. (77-78). Diaz was not on duty at the time of his crash, nor was he in his State Police vehicle. (80). Diaz did not flee the scene and gave no indication that he was untruthful and he was accepting of responsibility during his administrative interview. (80-81). Mitigating circumstances were taken into consideration during the determination of the Board's recommendation. (82). There have been times when Simington has disagreed with the Merit Board's ultimate decision. (83-84). The Board does not have the power to change the recommended level of discipline; the recommended level is determined by the Disciplinary Matrix. (84-85). The Board makes a recommendation to the Director, and the Director either supports or does not support the recommendation. (86). The Director supported the recommendation to terminate Diaz. (86).

To Simington's knowledge, the Board recommends up to termination in any case in which there is a DUI conviction. (87). Currently, the Board does not consider the specific facts and circumstances leading up to the DUI conviction in their determination to recommend up to termination. (88).

MARGARET McGREAL
(Called in Respondent's Case (Pgs. 95-116))

Margaret McGreal has been employed in various roles with the Illinois State Police for 22 years. (95). McGreal began as a patrol Trooper in 1997 and was quickly assigned to a specialty team that targeted reckless drivers. (95-96). In 2006, McGreal was promoted from Trooper to sergeant, then in 2009 she was promoted to master sergeant. (96). Throughout these promotions, McGreal continued to patrol and remained a member of the specialty unit. (96). McGreal was then an acting lieutenant for 18 months in District 5 before being fully promoted to lieutenant. (96). At that point McGreal requested a transfer back to Chicago,

which was granted in 2015. (96). McGreal later became acting captain of the south sector patrol and was promoted to captain on September 1, 2018. (95). McGreal is currently assigned as District Chicago Commander. (96). Diaz has, at various times, been under McGreal's span of control; Diaz worked for McGreal upon her return as sector lieutenant of Chicago. (96-97). McGreal and Diaz did not socialize off-duty and have no interactions beyond their time working together. (97). McGreal viewed Diaz's Part 2 job performance evaluations. (99). Part 2 evaluations are used to review a Trooper from the previous year and determine areas of improvement. (99). McGreal has extensive experience reviewing Part 2 evaluations. (100). Diaz's Part 2s showed typical ratings for a Trooper at Diaz's career stage. (100). McGreal did not find anything on Diaz's Part 2s that would have alarmed her as an FTO trainer. (100-101).

A Part 3 is the Trooper's subsequent rating and evaluation for suitability for assumption of supervisory promotion to sergeant. (99-100). There is not a set minimum time before a Trooper can be promoted, though typically the process is four or five years. (100). McGreal is unaware of any official policy which would preclude promotion in fewer than four years. (100).

During Diaz's restricted duty he was assigned to the District Chicago headquarters and worked in the DVD room, copying DVDs for packets and tracking the DVD system for the District. (101-102). McGreal worked at the District Chicago headquarters during this time and saw Diaz daily. (101). Diaz's then office was the first that any person entering through the security door would pass; McGreal passed Diaz's office daily, and on days that Diaz's office door was open McGreal would say hello to Diaz. (101-102). Diaz would work through lunch to complete assignments and was able to retrieve DVDs for McGreal quickly – often within approximately 15 minutes. (102-103).

McGreal considers Diaz's behavior while on restricted duty to be above and beyond what was asked and finds Diaz to be friendly and extremely accommodating about working extra time or shifts to which he was not originally assigned, as necessary. (103). McGreal was aware that Diaz was working on restricted duty, though had no input or involvement in his disciplinary proceedings or recommendation for up to termination. (103-104). McGreal is unaware of any specific steps Diaz has taken to remedy any issues in his life prior to the incident, however she has had nothing but positive interactions and described Diaz as someone clearly trying their best to perform as a team player with a positive attitude. (104-105). Though restricted duty is normally limited to Monday through Friday, Diaz would volunteer to work weekends when the District did not have adequate staffing for a shift or in emergency situations. (105-106). McGreal did not observe any abnormal or excessive sick leave or physical problems impacting Diaz's performance. (106).

McGreal believes, based on her experience with Diaz, that his crash was an isolated incident. (106). Based on Diaz's performance while on restricted duty, McGreal would recommend that Diaz be returned to full-duty as a contributing member of the Department. (106-107).

McGreal was not at the scene of the crash on April 8, 2016, nor was she involved in the subsequent investigation. (107). As the sector lieutenant, McGreal was informed on April 8, 2016 that Diaz was involved in an accident. (107-108). McGreal does not recall specifically, but believes she saw one or both videos of the accident closer to the time it occurred – either from the street view camera or the camera located inside the Walgreen's. (108-109). McGreal was not Diaz's direct supervisor at the time of the crash and was not aware of any of Diaz's drinking

habits. (108). McGreal knew at the time what Diaz's blood alcohol content was and recalls that it was above the legal limit, though she does not remember the specific number; she had no reason to disagree with the numbers presented to her at the time of her testimony. (109-110). At the time of the crash McGreal was familiar with the specifics of the accident, however she does not recall if she knew at that time that there was an individual located in front of the Walgreen's minutes before the crash. (112). Though there is no internal review process for alcohol evaluation or if an incident was an isolated incident, McGreal feels that Diaz's professional behavior indicates that he does not have an alcohol problem. (113-115). McGreal has had experience with officers who were alcoholics and stated that Diaz did not exhibit any of the signs or behaviors typical of those the alcoholic officers displayed. (115-116). Following the accident and during Diaz's subsequent treatment McGreal did not attend any treatments with Diaz and Diaz did not submit documentation from treatment to McGreal. (116).

ANGELO MOLLO
(Called in Respondent's Case (Pgs. 117-136))

Angelo Mollo is a lieutenant with the Illinois State Police and has been employed by the Illinois State Police for approximately 22 years. (117). Mollo began his career in patrol for five-and-a-half years, then became a District Chicago Staff Officer for approximately five years before being promoted to sergeant, at which time he returned to patrol. (118). Mollo spent three years on patrol before being asked to be the administrative master sergeant in 2013. (118). In May 2017, Mollo was promoted to lieutenant. (118).

Mollo has known Diaz closely since approximately March or April of 2016. (118). Prior to Diaz's crash, Diaz was not under the direct span of control of Mollo; following the crash Diaz was under Mollo's direct span of control. (118).

Mollo interacted with Diaz daily for two years during Mollo's time as an administrative master sergeant and got to know Diaz well. (118-119). Mollo stated that Diaz does a great job and organizes subpoenas and other court records in record time, as well as assisting with other duties not specifically assigned to Diaz. (119). Mollo and Diaz do not socialize outside of work. (119).

Mollo completed Diaz's Part 2s (Exhibit B) and has completed Part 2s for officers since 2009. (119-121). Mollo reviewed his own Part 2s and talked with other supervisors on how to correctly complete Part 2s for other officers. (121). To complete a Part 2, Mollo reviews each category and determines if the officer needs improvement, meets expectation, or exceeds expectation. (121). Depending on the duties of the officers, the categories that are used may vary. (121). Due to Diaz's restricted duty, some categories were marked "N/A"; the completed categories directly related to Diaz's performance while on restricted duty. (121-122). Mollo has experience supervising officers on restricted duty in the past. (122). Mollo did not find anything on Diaz's Part 2 that would cause Mollo concern. (122-123).

Mollo is familiar with the letter dated April 8, 2016 in which sections 1, 2, & 3 relate to Diaz's duties on restricted duty and place Diaz under Mollo's responsibility. (123-124). Mollo was responsible for supervising Diaz and ensuring that he followed points 1, 2, & 3 of the administrative letter. (124). Mollo was functionally responsible for enforcing Diaz's duties according to the letter. (124-125). Diaz is, as of October 22, 2018, operating under the same restrictions found in the letter. (125). As part of Diaz's current duties, he is the vault custodian in charge of video mediums – copying dashcam footage and providing footage to the court as necessary. (125).

Mollo saw Diaz daily during Diaz's restricted duty. (127). During that time, Mollo witnessed Diaz complete assignments quickly and Diaz would routinely offer additional assistance to Mollo. (127). Diaz has not presented any behavioral problems to Mollo during his time restricted duty. (128, 132-133). Diaz would work additional shifts on weekends to free up time for officers to be with their families or involved in other activities. (128-129). While Diaz was assisting on weekends he was supervised by a watch commander; the watch commander never reported any performance issues with Diaz to Mollo. (128-129).

Mollo's supervision of Diaz did not begin until after the crash in April 2016. (134). Prior to the crash Mollo had hardly any contact with Diaz due to their differing duties. (134). Mollo is aware that Diaz was ordered to wear an ankle monitor because Diaz, an avid swimmer, was unable to swim with the ankle monitor. (135). Mollo was aware that Diaz had the ankle monitor subject to court order; Mollo was not aware as to how much damage was caused to the Walgreen's by the crash and did not view the video footage of said crash, nor did Mollo know Diaz's blood alcohol content at the time of the crash. (135-136).

JENNIFER PFAFF
(Called in Respondent's Case (Pgs. 137-152))

Jennifer Pfaff is a licensed counselor in the state of Illinois and is currently employed by Janelle A. DiMichele & Associates – a private practice for licensed clinical social workers. (137-138). Diaz began counseling with Pfaff as an employee assistant program (EAP) referral. (139). Diaz had four sessions through the EAP and then Diaz used his private insurance for ongoing therapy. (139-140).

Pfaff first met Diaz on September 19, 2016. (141). Pfaff last met with Diaz in September 2017. (147). Diaz had twelve appointments scheduled and appeared for eleven; he "no-call/no-

showed" one appointment, though called later in the day to apologize for forgetting. (141). Diaz ceased treatment because he felt that he was in a holding pattern and his stress level was uncertain based on the outcome of his cases. (149).

During their first meeting, Diaz told Pfaff he was seeking therapy following a discussion with his attorney about his DUI and that he felt ashamed and embarrassed about the DUI. (141-142). Pfaff and Diaz discussed mechanisms that Diaz could use to cope with employment related stress that did not involve alcohol. (142). Pfaff discussed mechanisms that Diaz could continue to use and apply when Diaz returned to working in the field, as opposed to on restricted duty. (142). At no point was Diaz tested for alcohol during these sessions, but at no point did Pfaff observe any of the effects of excessive alcohol consumption with Diaz. (142-143). Pfaff has worked with alcoholism patients in the past; her practice focuses on the mental health aspect of alcoholism and not the actual drug and alcohol treatment itself. (143-144, 146-147). Pfaff has observed common mental health aspects in these alcoholism patients, including continuing to drink despite repercussions and missing work. (144). Based on Pfaff's prior experience, excessive drinking combined with lack of sleep may also lead to impaired judgment. (145-146). Pfaff did not observe these same issues during her sessions with Diaz. (144). Diaz was unable to drink when he began his sessions with Pfaff due to his ankle monitor; Diaz would later tell Pfaff that if he did drink, he would call a ride instead of driving himself because he had learned his lesson. (144). Diaz did not cease drinking entirely. (148).

During the year that Pfaff had sessions with Diaz she did not observe behavior that indicated a history of substance abuse or inpatient treatment. (145). Diaz reported no previous therapy. (145). During that year Diaz appeared to be coping with stress well in general. (145).

Pfaff did not know Diaz prior to September 2016 and his prior history is based on his self-reporting. (148).

During at least a portion of the year that Pfaff met with Diaz, Diaz attended AA meetings. (147). Diaz told Pfaff that he stopped going for a period, but later began re-attending. (147). AA meetings are run by former alcoholics and are not therapeutic in nature. (150). There is often no therapeutic benefit in going to AA meetings, although some people may be moved by the stories of former alcoholics and motivated to cease drinking. (150). Diaz told Pfaff of the benefit he derived from going to AA meetings and hearing former alcoholics share their stories. (150). Pfaff did not monitor Diaz's attendance or progress with AA or refer him to an alcohol counselor, as that was handled separately and as a part of his DUI case. (151). In Pfaff's professional opinion, Diaz is not an alcoholic of the nature she has seen before and instead drank too much and made some bad decisions. (152).

DOMINICK P. FALCONE
(Called in Respondent's Case (Pgs. 153-168))

Dominick Falcone is a Master Sergeant with the Illinois State Police. (153). Falcone began with the Illinois State Police in 1998 and spent approximately ten years as a road Trooper. (153-154). After ten years as a road Trooper, Falcone was asked to be a staff officer for approximately one year before being tasked to another region. (154). After approximately three more years Falcone went into the Division of Operations (DOO) when his commander was promoted and brought Falcone with him into the DOO. (154-155). Falcone was promoted to sergeant and eventually transferred to District Chicago in 2013. (155). In 2014, Falcone became acting master sergeant and would fill roles as platoon commander or shift commander. (155).

In 2016, Falcone was fully promoted to Master Sergeant. (155). Falcone achieved his current role as Administration Master Sergeant in June 2017. (155).

Falcone has known Diaz for as long as Diaz has been on the job. (155-156). Diaz has been under Falcone's span of control since June 2017, while Diaz was on restricted duty. (156). Falcone and Diaz did not socialize or interact outside of work. (156). Falcone completed Diaz's 2018 Part 2 employee evaluation. (156-157). Falcone saw Diaz on a near daily basis prior to completing Diaz's Part 2. (157). Falcone reviewed Diaz well and stated that Diaz performed his job well while being a team player. (157-158, 162-163). Falcone commended Diaz for his flexibility and willingness to be available outside of Diaz's scheduled shifts. (162-164). Falcone feels that Diaz is an asset to the Department and can continue to contribute if retained with the Department. (165).

Falcone supervises all administrative personnel who are on restricted duty in Chicago. (159). Falcone oversees a variety of matters depending on the type of duty assigned, as well as the vehicle fleet, computer matters, and sworn and unsworn clerical personnel. (159-160). Diaz directly reports to Falcone. (160). Diaz contacted Falcone once with an issue regarding scheduling; Falcone was accommodating to Diaz to allow him to comply with other requirements and still be accountable to Falcone and to Diaz's post. (161-162).

Falcone is not aware of the facts surrounding Diaz's accident on April 8, 2016. (166). Falcone was not a part of the investigation into Diaz's crash. (166). At the time of Diaz's crash, Diaz did not report to Falcone and was not directly under Falcone's control. (167).

III. FINDINGS OF FACT

A. General Findings of Fact

Trooper Diaz Background

Valentino Diaz has been an Illinois State Police Trooper since February 3, 2013 and holds the rank of Trooper. There was no testimony that he has ever been disciplined before. The respondent submitted various positive employment evaluations received. Multiple supervisors and coworkers testified on behalf of Diaz and spoke favorably of his character and work behavior. These witnesses had no negative comments regarding Diaz's work performance and their testimony was not challenged by the Department.

Driving a Vehicle While Under the Influence of Alcohol

The facts are uncontested, and Trooper Diaz admitted to all counts. On April 7, 2016, Diaz visited Chuck's Southern Comforts Café and consumed multiple glasses of whiskey and Coca-Cola. After several hours of drinking, Diaz drove his personal vehicle – a 2009 Infiniti, Model G37 – to the Fire Station Pub while intoxicated. At the Fire Station Pub Diaz continued drinking while intoxicated.

After an unknown amount of time, Diaz left the Fire Station Pub and attempted to drive his personal vehicle to his home at 5153 South LeClaire Avenue. While attempting to drive home, Diaz crashed his vehicle into the front door of the Walgreens located at 7150 West Archer Avenue, Chicago, Illinois. The crash occurred at 3:42 A.M. on April 8, 2016 and caused approximately \$77,000 worth of damage to the buildings and stock. Diaz has since made restitution to Walgreens for the damage.

Several law enforcement agencies responded to the crash, including Chicago Police Department Officer Ivan Lopez, star number 13516. Diaz responded affirmatively that he had

been drinking when asked by Officer Lopez. Diaz received minor injuries and was transported to Loyola Medical Center. While at the medical center Diaz was administered a blood draw which resulted in a blood alcohol content of .314 based on serum or plasma-based calculations; this blood alcohol content was later recalculated using a whole blood formula, which returned a blood alcohol content of .266¹. At 6:43 A.M. on April 8, 2016, Officer Lopez arrested Trooper Diaz for driving under the influence of alcohol.

On June 19, 2017, Diaz accepted responsibility and pled guilty to the offense of Driving Under the Influence of Alcohol, 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court (16TRTK110482). Diaz was sentenced to one-year court supervision, ordered to complete alcohol counseling and treatment, attend a victim impact panel, and ordered to pay a fine of \$1,329.00. Diaz also participated in the Cook County Sheriff's Police Work Alternative Program (S.W.A.P.). Diaz completed all terms of his sentence, including restitution, by June 2018.

Violation of State Law – Guilty Plea to Driving Under the Influence of Alcohol

To sustain a charge that Trooper Diaz committed a Violation of State Law, the Department must show that an officer entered a guilty plea or is otherwise found guilty of a violation of law. Such a plea or finding shall constitute *prima facie* evidence of a violation. The general facts that support the Department's count of a Violation of State Law for a Guilty Plea to Driving Under the Influence of Alcohol are the same as those for Count I – Driving a Vehicle Under the Influence of Alcohol. As previously stated, Diaz pled guilty to the offense of Driving

¹ The .314 blood alcohol content was derived using the serum or plasma calculation method. The .08 blood alcohol content legal limit included in the statute is calculated using the whole blood calculation method. To convert from serum or plasma to whole blood, one takes the serum or plasma value and divides by 1.18. Applying this calculation gives a whole blood-based blood alcohol content of .266. This variance is caused because the amount of water in serum is approximately 18% higher than in whole blood.

Under the Influence of Alcohol, 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court. Diaz's guilty plea acts as *prima facie* evidence to support the Department's charge of a Violation of State Law.

Consuming Alcoholic Beverages to the Extent It Results in Impairment That Discredits Him or the Department

To sustain the charge that Trooper Diaz Consumed Alcoholic Beverages to the Extent It Results in Impairment that Discredits Him or the Department, the Department must show that Diaz consumed alcohol to the extent that it resulted in impairment, intoxication, or obnoxious or offensive behavior that discredits them or the Department or renders the officers unfit to report for their next regular tour of duty.

Trooper Diaz admitted that his conduct on the evening of April 7, 2016 and the morning of April 8, 2016 (described above) constituted consuming alcoholic beverages to the extent that it discredited him or the Department.

Bringing the Department into Disrepute

To sustain a charge that Trooper Diaz Brought the Department into Disrepute, the Department must show that an officer did not maintain a level of conduct in keeping with the highest standards of law enforcement – officers must not participate in any conduct that impairs their ability to perform as law enforcement or brings the Department into disrepute.

Trooper Diaz told Officer Lopez that, "It's obvious, I'm fucked up," when Officer Lopez asked Trooper Diaz if he (Diaz) had been drinking. Trooper Diaz admitted to a violation of this rule based on his conduct on April 8, 2016 when he crashed his personal vehicle into the Walgreens store while intoxicated. Additionally, Diaz brought the Department into disrepute

when his employment as an Illinois State Police Officer became known to the various CPD officers that were involved with the processing of his arrest.

B. Specific Findings of Fact

COUNT I

Count I of the Complaint against Valentino Diaz (Respondent) alleges that he violated Department Directive ROC-002, Rules of Conduct, Paragraph III.A.47.b., which states in pertinent part:

“Officers will not... (b) while on or off-duty, drive or be in physical control of a vehicle while under the influence of alcohol, any other drugs, intoxicating compounds, or any combination thereof.”

(First Offense – Level 7 Misconduct: Up to Termination)

The Complaint alleges that Respondent violated this Rule in that on or about April 8, 2016, he committed the offense of driving under the influence of alcohol when he consumed alcohol and drive his personal vehicle and then crashed his vehicle into the front of a Walgreens store.

FINDING

As discussed in the General Findings, Respondent pled guilty to the offense of driving under the influence. The Department proved this charge by a preponderance of the evidence when Respondent admitted to driving under the influence of alcohol.

COUNT II

Count II of the complaint alleges a violation of Department Directive ROC-002, Rule of Conduct, Paragraphs III.A.1. and 2., which state:

1. Officers will uphold the Constitutions of the United States and the State of Illinois, obey all federal laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

2. If an officer enters a plea of guilty, nolo contendere, stipulates to the facts or is found guilty of a violation of law, or if there is any other judicial determination that will support any punitive measure taken against the officer, such action by the officer or judicial entity will be prima facie evidence of a violation of this directive.
(Misdemeanor Offense – Level 6 Misconduct: 90 to 180 Days)

The Complaint alleges that the Respondent violated this Rule in that on June 19, 2017, Respondent pled guilty to the offense of Driving Under the Influence of Alcohol in violation of 625 ILCS 5/11-501(a)(2) in Cook County Circuit Court case 16TRTK110482.

FINDING

The Respondent admitted to the offense. The Department proved this charge by a preponderance of the evidence by showing that Respondent entered a plea of guilty of a violation of law.

COUNT III

Count III of the Complaint alleges a violation of Department Directive ROC-002, Rule of Conduct, Paragraphs III.A.47.(g), which states:

“Officers will not...(g) consume alcoholic beverages, while off-duty, to the extent that it results in the impairment, intoxication, or obnoxious or offensive behavior that discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty.”

(First Offense – Level 3 Misconduct, 15 to 30 Days)

The Complaint alleges Respondent violated this Rule during the evening hours of April 7, 2016 and through the early morning of April 8, 2016 when he consumed several alcoholic beverages at different bars until he was intoxicated and then crashed his vehicle into a Walgreens retail store.

FINDING

The Department proved this charge by a preponderance of the evidence when

Respondent admitted to consuming alcohol to the extent that resulted in impairment and discredit to the Department.

COUNT IV

Count IV of the Complaint alleges a violation of Department Directive ROC-002, Paragraphs III.A.8., which states:

“Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute.”

(First Offense – Level 2 Misconduct: 4 to 10 Days)

The Complaint alleges that Respondent violated this Rule in that on April 8, 2016, he engaged in conduct which caused the Department to be brought into disrepute when he crashed his personal vehicle into the front door of a Walgreens retail store while impaired.

FINDING

The Department proved this charge by a preponderance of the evidence by showing that Respondent brought the Department into disrepute when he crashed his personal vehicle into the front door of a Walgreen retail store after Respondent admitted to driving under the influence and crashing his vehicle into a Walgreens store and his employment as a State Police Officer was communicated to the Chicago Police Officers on the scene.

IV. CONCLUSIONS OF LAW

1. The Illinois State Police Merit Board has jurisdiction over the parties and the subject matter of this case.
2. This matter is decided exclusively on the evidence admitted at hearing.

3. The burden of proof in this case rests upon the Illinois State Police. The Illinois State Police are required to prove the allegations of the Complaint by a preponderance of the evidence (80 Ill. Adm. Code Ch. IV Secs. 150.665(f), 150.680(a)). By requiring proof of a matter by preponderance of the evidence, the Illinois State Police are required to prove that the matters asserted are more probably true than not true (Illinois Pattern Jury Instructions, Civil, 21.01).

4. Regarding Count I of the Complaint, the Department has proven a violation of ROC-002 Paragraph III.A.47.b. The Department met its burden when Respondent admitted to driving under the influence of alcohol.

5. Regarding Count II of the Complaint, the Department has proven a violation of ROC-002 Paragraph III.A.1. and 2. The Department met its burden that Trooper Diaz entered a guilty plea.

6. Regarding Count III of the Complaint, the Department has proven a violation of ROC-002 Paragraph III.A.47.(g). The Department met its burden that Trooper Diaz consumed alcohol to the extent that it resulted in impairment that discredits the Department after Respondent admitted to the offense.

7. Regarding Count IV of the Complaint, the Department has proven a violation of ROC-002 Paragraph III.A.8. The Department met its burden when Respondent admitted to consuming alcohol to impairment and then crashing his personal vehicle into a Walgreens.

V. PENALTY CONSIDERATION

This Hearing Officer recognizes that the determination of an appropriate discipline is exclusively the prerogative of the Merit Board and makes no recommendation herein.

However, to provide some context for the Merit Board's imposition of discipline, the following items are noted.

The Department is seeking termination of Trooper Diaz's employment with the Illinois State Police.

Counsel for the Department makes the argument, as they do in every hearing, that since no two disciplinary matters are the same, past Department discipline should not be given much, if any weight. However, in the opinion of this Hearing Officer, the best court-issued *general* guideline is found in *Siddiqui v Department of Professional Regulation*, 307 Ill. App. 3d 753, 764 (1999), "[while] a hearing officer may consider sanctions imposed in similar cases, each case must be considered on its merits and it is for the agency to determine the appropriate sanction in each case."

Factors in Aggravation

Counsel for the Department argues that 1-minute and 18-seconds prior to Trooper Diaz's crash there was a person sweeping the entrance in front of the Walgreens retail store. Counsel for the Department further argues that the testimony provided by Tpr. Diaz' three character witnesses should be discounted since none of them worked with Tpr Diaz while he was on patrol. (ISP Closing Arguments, p.3). That statement is not entirely accurate for Captain McGreal. She was his Sector Lieutenant prior to the crash. (97).

The primary witness in aggravation for the Department was Colonel Simington. He stated that the ISP has high standards for its officers and that driving while intoxicated painted the Department in a negative light with other agencies (66). He further stated that 25-30% of all traffic fatalities are alcohol-related. (66).

The Department submitted one precedent case, *In the Matter of Trooper Cody Garza* (2018), but did not cite to it in its closing arguments nor did it explain why the case is relevant and should be considered in this matter. Nevertheless, the Hearing Officer notes that Garza was found to have been driving under the influence and being intoxicated during two police incidents on succeeding days in which one citizen forcibly disarmed Garza of his weapon after the weapon had been discharged. The Merit Board terminated Trooper Garza's employment with the Illinois State Police.

Factors in Mitigation

Most of the closing arguments cited by Trooper Diaz concern the mitigation of punishment related to his DUI. To that end, Respondent cites to previous Merit Board decisions and settlement agreements with the Department wherein officers with similar misconduct (drinking and driving, etc.) received penalties less than termination – ranging from a 60-day suspension to a 180-day suspension.

Respondent's closing argument cites to two settlement cases where officers were suspended following similar, though not exact, examples of misconduct. *In the Matter of Master Sergeant Harry Wellbank* (2005) dealt with a Master Sergeant who was charged, in part, with refusal to obey lawful orders, failure to operate a vehicle in a careful and prudent manner, discrediting the Department, and conduct unbecoming an officer. For these offenses Master Sergeant Wellbank received a 180-day suspension.

In re the Matter of Trooper Timothy Baker (2015) contained allegations of driving under the influence, submitting a false memorandum, leaving the scene of a property damage accident, and engaging in conduct bringing the Department into disrepute. The Department

and Trooper Baker settled, and Trooper Baker received a 180-day suspension.

The remaining four cases cited by Respondent are Merit Board decisions that resulted in 60-day, 120-day and 180-day suspensions. All four of these cases included allegations of operating a vehicle under the influence of alcohol and bringing the Department into disrepute.

In re the Matter of Trooper Lyle Hicks (2010), Trooper Hicks operated his state-issued vehicle while under the influence of alcohol and was involved in a one-vehicle traffic accident after failing to navigate a curve. The Merit Board imposed a 180-day suspension for these and other charges.

In re the Matter of Trooper Michael Lopez (2011) is similar to this case in that Trooper Lopez, while driving his personal vehicle, was involved in a two-car traffic accident after driving under the influence. The Merit Board imposed a 60-day suspension.

In re the Matter of Jasen L. Woo (2008) involves an officer operating his official vehicle while off-duty and under the influence of alcohol. Trooper Woo was involved in a single-car accident while traveling more than 60 miles per hour in a 30 mile per hour zone. Additionally, Trooper Woo refused sobriety tests and failed to accurately describe the alcohol in his system to officers on the scene. The Merit Board imposed a 180-day suspension.

Finally, Respondent cites to *In re the Matter of Sergeant Jeffrey R. Dybeck* (2018), a Merit Board decision wherein Sergeant Dybeck operated a Department vehicle under the influence of alcohol while on duty or in uniform, driving under the influence, reporting for duty under the influence, discrediting the Department, conduct unbecoming an officer, and failure to operate a vehicle in a careful and prudent manner. The Merit Board imposed a 120-day suspension.

Three witnesses testified in favor of Tpr. Diaz' character. Captain McGreal gave a very positive evaluation of Tpr. Diaz work performance. (104-105). Notably, she further opined she believed the incident to be an isolated incident, Tpr. Diaz could be a contributing member to the Department and that she "highly" recommended him to be able to return to full duty. (106-107).

Lt. Mollo testified favorably on Tpr. Diaz's work performance in the last two years that Tpr. Diaz has worked for him in his current administrative, non-police officer role. (118-119). He also testified that if retained, he thought Tpr. Diaz could be a contributing member to the Department. (133).

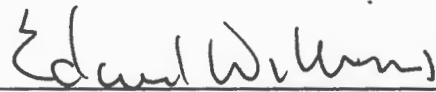
Master Sergeant Falcone testified he also directly supervised Tpr. Diaz for the last two years in his position as the Administrative Master Sergeant for the District. Master Sergeant Falcone was effusive in his praise for Tpr. Diaz's attitude, work habits and team spirit. (162-165). Master Sergeant Falcone further stated that he thought the Department would be a better place with Tpr. Diaz than without him. (165).

The Department did not present any evidence or testimony to dispute Trooper Diaz's work ethic or on-the-job behavior.

Ms. Jennifer Pfaff testified that she is a Licensed Clinical Social Worker in Illinois and has been practicing in Illinois for 12 years. (137-138). Prior to that she was licensed in Indiana. (138). Ms. Pfaff was unequivocal in her opinion that Tpr. Diaz did not display any of the symptomology associated with someone suffering from alcohol abuse. (144). She further stated that in her professional opinion he is not an alcoholic. (152).

The Hearing Officer notes that Trooper Diaz at every opportunity during these

proceedings accepted total responsibility for his actions and appeared to be genuinely appreciative of the wrongfulness of his conduct. As stated previously, he admitted to each count of the Complaint. This Hearing Officer found him to be credible in his expressions of shame and embarrassment.

A handwritten signature in black ink, appearing to read "Edward Williams", written over a horizontal line.

Edward W. Williams, Hearing Officer
Illinois State Police Merit Board

Edward W. Williams
Williams & Nickl, LLC
205 W. Wacker Dr., Suite 625
Chicago IL 60606
312-335-9470

RECEIVED

APR 10 2018

STATE OF ILLINOIS
ILLINOIS STATE POLICE MERIT BOARD

ILLINOIS STATE POLICE
MERIT BOARD

IN THE MATTER OF:

TROOPER VALENTINO DIAZ
I.D. No. 6393



)
)
) Illinois State Police
) Merit Board No. 18-3
)
)

COMPLAINT

NOW COMES Leo P. Schmitz, Director of the Illinois State Police, pursuant to 20 ILCS 2610/14 and 80 Ill. Admin. Code § 150.575, and states as follows:

COUNT I

DRIVING A VEHICLE WHILE UNDER THE INFLUENCE OF ALCOHOL

1. Valentino Diaz (Respondent) is employed as a State Police Officer by the Illinois State Police (Department). Respondent holds the rank of Trooper and has been employed by the Department since February 3, 2013.
2. At all times relevant to this Complaint Respondent was assigned to patrol duties in District Chicago in Des Plaines, Illinois.
3. At approximately 9:00 p.m. on April 7, 2016, Respondent visited a bar in Burbank, Illinois called Chuck's Southern Comforts Café ("Chuck's"). Chuck's is located at 6501 West 79th Street, Burbank, Illinois. Respondent consumed multiple glasses of whiskey and Coca-Cola to the point wherein he became

intoxicated. Respondent did not go to Chuck's with anyone, although a friend of his named Adrian Sanchez was a bartender there. After several hours of drinking alone at Chuck's, Respondent then drove his personal vehicle, a 2009 Infinity, Model G37, to another bar called Fire Station Café. The Fire Station Café is located at 6336 S. Harlem, Summit, Illinois. The distance between Chuck's and the Fire Station Café is 3.3 miles. Respondent drove these three miles while admittedly intoxicated. But yet once he arrived at the Fire Station, he consumed additional alcoholic beverages of an unknown type. After an unknown amount of time at the Fire Station Café, Respondent left and attempted to drive back to his residence which is located at 5135 South LeClaire Avenue, Chicago. At approximately 3:42 a.m., while driving home from the Fire Station Cafe, Respondent drove his vehicle through the front door of a Walgreens store located at 7150 West Archer Avenue, Chicago, Illinois. This crash was captured on Walgreens' store security video, attached as Exhibit 1 to this Complaint. The cost to repair the damage to the Walgreens store was over \$43,000.

4. Several minutes later officers from the Chicago Police Department arrived on scene. CPD Officer Ivan Lopez, star no. 13516, observed Trooper Diaz standing outside the front door of the Walgreens store. Officer Lopez then asked Trooper Diaz if he had been drinking. Trooper Diaz responded: "It's obvious. I'm fucked up."

5. At approximately 3:50 a.m. on April 8, 2016, Chicago Fire Department ambulance #12 arrived on scene. While being slow to respond and forgetful, Trooper Diaz initially refused treatment on scene or transportation to the hospital. Subsequently, however, at approximately 4:15 a.m., Trooper Diaz was transported via ambulance to Loyola University Medical Center in Maywood, Illinois for treatment of his injuries which included multiple lacerations from shards of broken glass. While at Loyola University Medical Center, Trooper Diaz' blood was drawn for the purpose of emergency room medical treatment. Said blood draw occurred at 4:45 a.m., about an hour after Trooper Diaz crashed through the front door of the Walgreens store. At 4:45 a.m., Trooper Diaz' blood alcohol level was .314, nearly *four* times the .08 legal limit for driving under the influence of alcohol.
6. At 6:14 a.m., while still at Loyola University Medical Center in Maywood, Trooper Diaz was placed under arrest for driving under the influence of alcohol by Chicago Police Officer Lopez. On June 19, 2017, Trooper Diaz pled guilty to the offense of DUI in violation of 625 ILCS 5/11-501(a)(2) Cook County Circuit Court, and received one year court supervision, ordered to complete alcohol counseling/treatment, attend a victim impact panel, and ordered to pay a \$1,329 fine under Cook County Circuit Clerk Case No.: 16TRTK110482. Said court supervision was subsequently terminated satisfactorily on March 13, 2018.
7. On January 18, 2017 agents from the Illinois State Police Division of Internal Investigations conducted an administrative interview of Trooper Diaz while in

the presence of his attorney and union representative after giving Respondent due notice of the allegations against him and his administrative rights. During his administrative interview, Respondent said, among other things, that he drank some whiskey and cokes at Chuck's bar over the course of a couple of hours, left Chuck's bar while intoxicated, got into his personal vehicle and drove to another bar called Fire Station, at which point he consumed additional alcoholic beverages, that he got back into his vehicle while intoxicated and caused a crash, he "blacked out" regarding his ability to remember other details of the crash and his drinking, was arrested by the Chicago Police Department and charged with two misdemeanor counts of driving under the influence of alcohol, failure to reduce speed to avoid an accident, plead guilty in court to the offense of driving under the influence of alcohol, performed community service through the Cook County Sheriff's Police work alternative program ("S.W.A.P."), and paid a \$1,329 fine.

8. Effective on April 8, 2016, Respondent was stripped of his police powers and placed on restrictive duty in an administrative capacity at ISP District Chicago in Des Plaines. Said restrictive duty continues to date.
9. On June 19, 2017, Respondent pleaded guilty to the offense of driving under the influence of alcohol in Cook County Circuit Court under Cook County Circuit Clerk Case No.: 16TRTK-110-482, and received twelve months of court supervision, ordered to undergo an alcohol evaluation and follow all treatment recommendations, attend a victim impact panel, and pay a fine of \$1,329. Said supervision was subsequently terminated satisfactorily on March 13, 2018.

10. All or a portion of the facts set forth herein constitute Respondent's violation of Departmental Directive ROC-002, Rules of Conduct, Paragraph III.A.47.b, which states:

"Officers will not ...

(b) while on or off-duty, drive or be in physical control of a vehicle while under the influence of alcohol, any other drugs, intoxicating compounds, or any combination thereof."

(First Offense-Level 7 Misconduct, Up to Termination)

Respondent violated this rule in that on April 8, 2016 in Chicago, Illinois he drove his personal vehicle off-duty while impaired and under the influence of alcohol.

COUNT II

VIOLATION OF STATE LAW

GUILTY PLEA TO DRIVING UNDER THE INFLUENCE OF ALCOHOL

- 1.-10. Paragraphs 1. through 10., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 10., inclusive, of Count II as if fully set forth herein.
11. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Rule of Conduct, Paragraphs III.A.1. and 2., which state:

“1. Officers will uphold the Constitutions of the United States and the state of Illinois, obey all federal, state and local laws in which jurisdiction the officer is present, and comply with court decisions and orders of courts having jurisdiction.

2. If an officer enters a plea of guilty, nolo contendere, stipulates to the facts or is found guilty of a violation of law, or if there is any other judicial determination that will support any punitive measure taken against the officer, such action by the officer or judicial entity will be prima facie evidence of a violation of this directive.”

(Misdemeanor Offense-Level 6 Misconduct: 90 to 180 Days)

12. Respondent violated these rules in that on April 8, 2016, he committed the Offense of Driving Under the Influence of Alcohol in violation of 625 ILCS 5/11-501(a)(2) in that he drove his personal vehicle off-duty while under the influence of alcohol. On June 19, 2017, Respondent pled guilty to said offense in Cook County Circuit Court under case number: 16TRTK110482.

COUNT III

CONSUMING ALCOHOLIC BEVERAGES

TO THE EXTENT IT RESULTS IN IMPAIRMENT

THAT DISCREDITS HIM OR THE DEPARTMENT

- 1.-10. Paragraphs 1. through 10., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 10., inclusive of Count III as if fully set forth herein.

13. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.47.(g), which states:

"Officers will not.....

(g) consume alcoholic beverages, while off-duty, to the extent that it results in impairment, intoxication, or obnoxious or offensive behavior that discredits them or the Department, or renders the officers unfit to report for their next regular tour of duty."

(First Offense-Level 3 Misconduct, 15 to 30 Days)

14. Respondent violated this rule in that during the evening hours of April 7, 2016 through the early morning hours of April 8, 2016 he consumed alcohol at several different bars until he was impaired and intoxicated, crashed his personal vehicle through the front door of a Walgreens retail store, and was arrested for driving under the influence of alcohol by the Chicago Police Department. Respondent was also scheduled to work on April 9, 2016, the day after he crashed through the front door of the Walgreens store. Respondent, however, did not show up for work that day; he contacted the Department and requested to use a "sick" day instead.

COUNT IV

BRINGING THE DEPARTMENT INTO DISREPUTE

- 1.-10. Paragraphs 1. through 10., inclusive, of Count I of the Complaint are adopted and incorporated by reference as Paragraphs 1. through 10., inclusive, of Count IV as if fully set forth herein.

15. All or a portion of the facts set forth herein constitute Respondent's violation of Department Directive ROC-002, Paragraphs III.A.8., which states:

"Officers will maintain a level of conduct in their personal and business affairs that is in keeping with the highest standards of the law enforcement profession. Officers will not participate in any conduct that impairs their ability to perform as law enforcement officers or causes the Department to be brought into disrepute."

(First Offense-Level 2 Misconduct: 4 to 10 Days)

16. Respondent violated this rule in that on April 8, 2016, he engaged in conduct which caused the Department to be brought into disrepute when he crashed his personal vehicle into the front door of a Walgreens retail store while impaired. Several Chicago Police Officers arrived at the crash scene and one of them, Chicago Police Officer Lopez, asked Respondent whether or not he had been drinking. Respondent replied, "It's obvious, I'm fucked up." Chicago Police Officer Lopez subsequently placed Respondent under arrest for driving under the influence of alcohol. Respondent plead guilty to said offense in Cook County Circuit Court on June 19, 2017.

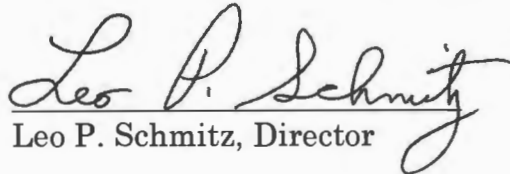
CERTIFICATION

A copy of Illinois State Police Department Directive ROC-002, Rules of Conduct, is provided in the incorporated attachment and is certified by the Director as accurate, complete, and in full force and effect at the time the aforementioned acts were committed.

CONCLUSION

WHEREFORE, by reason of these facts and charges, I request the Illinois State Police Merit Board conduct a hearing in this matter and terminate Respondent from employment with the Illinois State Police.

Respectfully submitted,


Leo P. Schmitz, Director

Illinois State Police
801 South Seventh Street, Suite 1100-S
Springfield, Illinois 62703



EXHIBITS

1. Walgreens store security video (attached)